

APPEAL NO. 031306
FILED JUNE 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 6, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to reimbursement of travel expenses for medical treatment at the direction of his treating doctor for the period beginning on December 11, 2001, and continuing through November 11, 2002, and that the claimant's compensable head, neck, and lower back injury of _____, does not extend to and include the claimant's head, neck, and lower back after October 13, 2000. The claimant appealed, disputing both determinations and attached correspondence from Dr. S which was neither offered or admitted into evidence at the CCH. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence we will only consider the evidence admitted at the hearing. We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through a lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). With this in mind, and after reviewing the evidence attached to the claimant's appeal, we find that it does not constitute new evidence which requires consideration for the first time on appeal.

The hearing officer did not err in determining that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of his treating doctor for the period beginning on December 11, 2001, and continuing through November 11, 2002. The hearing officer determined that the claimant did not sustain his burden of proving that he is entitled to reimbursement under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6(b) (Rule 134.6(b)) because he did not demonstrate to the hearing officer's satisfaction that "medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence." Our review of the record does not reveal that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the hearing officer's determination

that the claimant is not entitled to reimbursement for travel expenses under Rule 134.6(b).

It was undisputed that the claimant sustained a compensable head, neck, and lower back injury on _____. There is conflicting evidence as to whether the claimant's head, neck, and lower back problems after October 13, 2000, are a result of his compensable injury of _____. The hearing officer determined that the claimant's compensable head, neck, and lower back injury of _____, does not extend to and include the claimant's head, neck, and lower back after October 13, 2000. The claimant contends that his treating doctor related his head, neck, and lower back problems after October 13, 2000, to the compensable injury. However, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer resolves conflicts in the evidence, including the medical evidence, and was entitled to believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude the hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ACE INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**JAVIER GONZALEZ
3421 WEST WILLIAM CANNON DRIVE
SUITE 131, PMB #113
AUSTIN, TEXAS 78745.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge